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International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 2053/2011

Views adopted by the Committee at its 112th session (7–31 October 2014)

Submitted by:	B.L. (represented by Balmain for Refugees)
Alleged victim:	The author
State party:	Australia
Date of communication:	15 April 2011 (initial submission)
Document references:	Special Rapporteur's rule 92 and 97 decision, transmitted to the State party on 26 April 2011 (not issued in document form)
Date of adoption of Views:	16 October 2014
Subject matter:	Deportation to Senegal
Substantive issues:	Right to life; right to protection from cruel, inhuman or degrading treatment or punishment; right to freedom of thought, conscience and religion
Procedural issues:	Insufficient substantiation; non-exhaustion of domestic remedies; inadmissibility *ratione materiae*
Articles of the Covenant:	6, 7 and 18
Articles of the Optional Protocol:	2, 3 and 5 (para. 2 (b))

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Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (112th session)

concerning

Communication No. 2053/2011*

Submitted by:	B.L. (represented by Balmain for Refugees)
Alleged victim:	The author
State party:	Australia
Date of communication:	15 April 2011 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 16 October 2014,

Having concluded its consideration of communication No. 2053/2011, submitted to the Human Rights Committee by B.L. under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The author of the communication is B.L., a Senegalese national born on 8 August 1978. At the time of submission of his communication, the author was in Australia, facing imminent removal to his country of origin. He claims that the State party will breach his rights under articles 6, 7 and article 18 of the Covenant if he is deported to Senegal. The Covenant and the Optional Protocol thereto entered into force for Australia on 13 August 1980 and 25 September 1991 respectively. The author is represented by Balmain for Refugees.

1.2 On 26 April 2011, the Special Rapporteur on new communications and interim measures, acting on behalf of the Committee, requested the State party not to deport the

* The following members of the Committee participated in the consideration of the present communication: Yadh Ben Achour, Christine Chanet, Ahmad Amin Fathalla, Cornelis Flinterman, Yuji Iwasawa, Gerald L. Neuman, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujlall B. Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili, Margo Waterval and Andrei Paul Zlătescu.
The texts of individual opinions by Committee members Gerald L. Neuman and Yuji Iwasawa (concurring), Dheerujlall B. Seetulsingh (concurring) and Fabián Omar Salvioli (concurring) are appended to the present Views.

author to Senegal while his communication is under consideration by the Committee. On 20 December 2011, the State party informed the Committee that the author remained in Australia.

Factual background

2.1 The author was born in Touba, Senegal, into a large and devoted Muslim family who were then and remain members of the Mourides Brotherhood.

2.2 Through a number of friends, around 1994, the author discovered the Assemblies of God Church, a Christian organization which offered food and other benefits to children who attended the church. He became interested in the Bible and decided to become a Christian. He was baptized on 13 November 1994. As a consequence of his conversion from Islam to Christianity, his father, brothers and neighbours told him that if he did not return to Islam, they would tell the Mourides Brotherhood to put a fatwa (death order) on him to be killed. On an unspecified date in November 1994, the author's family and some members of the Mourides Brotherhood attacked him and he suffered injuries which prevented him from walking for several days. The author also claims that he was thereafter[1] kept at his father's house for three days without food in an attempt to force him to convert back to Islam. The author's father told him that he had brought disgrace and shame on his family and wanted him killed, unless he converted back to being a Muslim.

2.3 On an unspecified date in 1994, the author left Touba for Kaolack, a city south of Touba, where he found work as a welder. While in Kaolack, he was located by his family and other members of the Mourides Brotherhood, who beat him up and left him for dead.

2.4 On one occasion, the author reported to the Senegalese police that the Mourides Brotherhood was going to kill him because he had become Christian. He was advised by a senior police officer that there was nothing the police could do to protect him because it was a family matter and because the Mourides Brotherhood was too powerful.[2]

2.5 A Christian pastor advised the author to leave Senegal, for his safety, and provided him with financial support to that end. The author arrived in South Africa on 14 October 1998. It was difficult to find work there and the author sold items on the street. He felt homesick and therefore returned to Senegal in 2006. He worked for a short period in Kaolack for his previous employer. However, he heard that people had come looking for him, so he went into hiding. The author felt unsafe and returned to South Africa in April 2006.

2.6 Owing to hostility towards foreign workers in South Africa, the author left for Australia, where he arrived on 14 October 2008.

2.7 On 9 April 2009, the author applied to the Department of Immigration and Citizenship (DIAC) for a protection visa (class XA) under the 1958 Migration Act. On 8 July 2009, DIAC refused to grant him a protection visa on the ground that he did not qualify as a person to whom Australia owed protection obligations under the 1951 Convention relating to the Status of Refugees.

[1] No date specified.

[2] The information submitted by the author is inconsistent regarding when and where that conversation took place — in Touba following the first incident or in Kaolack following the second incident. According to a Statutory Declaration dated 21 October 2010, which was submitted with the communication, the conversation occurred following the first incident, and the police officer warned him that the Mourides Brotherhood was "too powerful in Touba".

2.8 On 24 July 2009, the author applied for review of the DIAC decision by the Refugee Review Tribunal (RRT). On 28 October 2009, RRT upheld the DIAC decision. RRT found the author to be a credible witness who spoke convincingly about his conversion and commitment to Christianity. The Tribunal also accepted that he had remained involved in the church in South Africa and Australia because he had found comfort and solace there, and not for the purpose of strengthening his refugee claim. The Tribunal accepted the author's claims about his family background and the negative attitude of his family members and some of their associates to his conversion from Islam to Christianity. The Tribunal accepted the author's evidence that he feared harm from his family and associates/friends of the family and that his family and associates belonged to the Mourides Brotherhood. It accepted the author's evidence that he was assaulted by his family and their associates on two occasions because he had converted to Christianity, and that his family was still looking for him when he returned to Senegal after 10 years in South Africa. It found, however, that their motivation was related to their desire to punish him for his conversion to Christianity, but had nothing to do with them being members of the Mourides Brotherhood. The Tribunal did not accept that the author had a well-founded fear of harm from the Mourides Brotherhood generally, in the light of independent country information on the subject.

2.9 On 28 October 2009, a request for ministerial intervention pursuant to section 417 of the 1958 Migration Act was referred by the RRT decision maker, with the request to consider whether the author's case amounted to unique and exceptional circumstances in which it would be in the public interest to intervene. The request was rejected by the Minister on 4 June 2010.

2.10 On 30 September 2010, the author filed a new request for ministerial intervention pursuant to section 417 of the 1958 Migration Act. The Ministerial Intervention Unit assessed the author's case on 4 February 2011. As it was determined that there had been no significant change in the author's circumstances raising new substantive issues that had not previously been considered, the request was denied.

The complaint

3.1 The author submits that he is living in fear of being physically harmed or killed, either by the Mourides Brotherhood or his own family, for having converted from Islam to Christianity.[3] He adds that if he had been born a Christian in Senegal, he would not have faced such persecution; it is his conversion that puts his life at risk. The author also submits that the Senegalese police would not be able to protect him and would not be able to stop the Brotherhood and his family killing him. Therefore, the author claims that his rights under articles 6 and 7 of the Covenant would be violated if he were forcibly returned to Senegal by Australia.

3.2 As to the author's claims under article 18 of the Covenant, he contends that if he were forcibly returned to Senegal, he would not be able to practise his Christian religion. He adds that he currently attends church services each week, and regularly studies the Bible. He is a committed Christian and will never return to the Muslim faith. If he were returned to Senegal, he would be subject to coercion, including the threat of death, by members of his own Muslim family and by members of the Mourides Brotherhood to convert back to Islam and thus be forced to forego his Christian faith.

[3] The author annexes statements of support from the Senegambia Association in Australia (undated) and the African Communities Council (dated 3 September 2010).

State party's observations on admissibility and merits

4.1 On 20 December 2011, the State party submitted observations on the admissibility and merits of the communication, in which it invited the Committee to declare the author's allegations under articles 6, 7 and 18 to be inadmissible, or, in the alternative, devoid of merit.

4.2 The State party recalls that, further to the consideration of his application for a protection visa on 9 April 2009, the author was found not to be a person in need of protection under the 1951 Convention, and was notified of that decision on 8 July 2009. On 28 October 2009, RRT confirmed the initial decision not to grant him a protection visa. On 28 October 2009, the RRT decision maker also referred the case to the Minister of Immigration and Citizenship for consideration on humanitarian grounds under section 417 of the Migration Act.[4] However, on 4 April 2010, the author was advised that the Minister had decided not to intervene in his case.

4.3 On 27 September 2010, the author introduced a second written request for ministerial intervention, based on a "significant change in circumstances". The author referred to the facts that: (a) after he was baptized, his family threatened to inform the Mourides Brotherhood, which would order him to be killed if he did not return to Islam; (b) when the author attended the police station in Touba in 1994, he was told by a senior police officer that there was nothing the police could do to protect him; (c) if he returned to Senegal, there is no town in which he would be safe, as his family and relatives live in different parts of Senegal (Dakar, Touba, Kaolack and Giorbel) and would find him and inform the Mourides and have him killed; (d) the Mourides Brotherhood has great power and influence in Senegal; (e) the author believes he is the first Christian convert from Touba, and the Mourides want him killed to prevent others from converting; (f) the author is healthy and employable and would fit well into Australian society. None of those claims was considered to raise any new information, or to evidence a change in the author's circumstances. Accordingly, he was advised on 4 February 2011 that his second request for ministerial intervention had been rejected.

4.4 A third request for ministerial intervention was filed by DIAC in July 2011, asking that his circumstances be reviewed, based on the communication he had submitted to the Committee. The author was invited to provide any relevant information to be considered, but failed to do so. His last application was denied on 22 July 2011, after his circumstances, as well as relevant, up-to-date information, were reviewed. The State party explains that the author remains in community detention.

4.5 The State party submits that the author's allegations under articles 6, 7 and 18 are inadmissible as the author has not exhausted domestic remedies, as required under article 5, paragraph 2 (b), of the Optional Protocol. On 28 October 2009, RRT affirmed the decision of DIAC not to grant the author a protection visa under the Migration Act. The author did not seek judicial review of the RRT decision, and failed to provide any reason for not doing so. The State party adds that the factual basis of the author's claims before domestic instances is substantially the same as that submitted to the Committee, and that the RRT decision that the author is not entitled to a protection visa addressed the issue at the heart of his present communication before the Committee, namely that he would be at risk of persecution by reason of his religious beliefs if returned to Senegal. The State party also submits that, if successful, judicial review of the RRT decision would result in reconsideration of his claim for a protection visa by RRT, which might ultimately remedy

[4] That provision confers a discretionary power on the Minister to intervene in cases in which it is considered by the Minister to be in the public interest to do so.

the author's claims with respect to return to Senegal, and therefore his claims under the Covenant. The State party further submits that judicial review of the RRT decision remains an available remedy which the author should exhaust prior to seeking the Committee's consideration of his claims under the Covenant.

4.6 The State party submits that, as the author has failed to sufficiently substantiate his claims under articles 6, paragraph 1, and 7 of the Covenant, those claims should be declared inadmissible by the Committee, in accordance with article 2 of the Optional Protocol. The State party stresses, in particular, that the author failed to adduce sufficient evidence with respect to his claims that he is at risk of harm by the Mourides Brotherhood or family members who are also members of the Mourides Brotherhood, because the police in Senegal cannot, or will not protect him. The State party is of the view that, beyond the evidence which was considered during domestic proceedings, the author has failed to adduce any reliable evidence which would support his claim that he would be unable to avail himself of adequate State protection.

4.7 The State party recalls that, after examining all the available evidence, RRT accepted the following: (a) the author converted to Christianity on 13 November 1994; (b) the author comes from a devout Muslim family which is part of the Mourides Brotherhood; (c) the author and his family lived in Touba, a predominantly Muslim town; (d) the author's family opposed his conversion to Christianity, and in November 1994, some of his family members and neighbours attacked him and kept him at home for three days without food; (e) members of the author's family told him that the Mourides Brotherhood would kill him or place a fatwa on his head; (f) the author ran away from Touba to the town of Kaolack, and was located by two of his brothers and other Mourides Brotherhood members, and beaten up; (g) the author lived in South Africa for 10 years, then returned to Senegal, and was given his former job back, but within a short time, he heard that his family was looking for him, which prompted him to return to South Africa and then to go to Australia; (h) the author fears harm from his family and associates of his family; (i) the author's family and associates belong to the Mourides Brotherhood; (j) the author's family and their associates wish to cause him harm because of his conversion to Christianity, but that is not related to their membership to the Mourides Brotherhood; (k) the author's family and their associates assaulted the author on two occasions because he had converted to Christianity, they were still looking for him when he returned to Senegal after 10 years in South Africa, and the author's family is still angry, as indicated in a letter from the family provided at the RRT hearing; (l) the author's religion is the essential and significant reason for persecution by his family and their associates; and (m) the author was assaulted by his family and a small number of associates because of a personal vendetta against the author, as a result of his conversion to Christianity.

4.8 The State party stresses that, in its decision, RRT made no explicit findings with respect to the author's claims that he had sought assistance from the police on one occasion and had been told that they were unable to assist him because it was a family matter and the Mourides Brotherhood was too powerful; and that he would not be safe anywhere in Senegal because of the presence of a large family, which would find him wherever he went. The State party further notes that RRT did not accept that the Mourides Brotherhood would kill the author or would have threatened to do so, or that a fatwa had been placed on his head; the author's claims that he had a well-founded fear of harm from the Mourides Brotherhood; or that Senegal was unable or unwilling to protect him from persecution.

4.9 The State party notes that the author submitted that he did not report the first incident of assault to the police, but only reported the second assault. The State party recalls that, upon reporting the second incident, the author claims that he was informed by a senior police officer that there was nothing they could do because it was a family matter and "the Mourides are too powerful in Touba city". According to the State party, even if the author's

claim is true, it is only an isolated incident which does not evidence widespread refusal or inability on the part of Senegal to protect the author on the basis of his religious beliefs. In any event, RRT explicitly considered that claim and rejected the author's contention that there would not be adequate or effective protection available to the author in the reasonably foreseeable future.

4.10 The State party observes that, although the author claims that he was assaulted on two occasions and that he would not be safe in any town or city, he only sought police protection once. Accordingly, the State party is of the view that the author failed to substantiate his claim that the police in Senegal are unable or unwilling to protect him from harm.

4.11 The State party also submits that there is no evidence that the author has attempted to relocate to any other part of Senegal other than Kaolack in order to avoid harm from his family. It adds that country information on the Mourides Brotherhood suggests that, while there may be incidents of intolerance, in general the Mourides Brotherhood displays a high degree of tolerance. Furthermore, although the author's family belongs to the Mourides Brotherhood, there is no evidence to suggest that the Mourides Brotherhood as an organization initiated, condoned or sanctioned any harm to the author.

4.12 The State party notes that the author's communication before the Committee does not contain any new material that has not already been considered by the Australian authorities in determining whether he was entitled to a protection visa under Australian law, and that his claim for protection was thoroughly considered by DIAC and RRT. After examining all the available evidence, RRT found that the author does have adequate and effective State protection available to him in Senegal, and that consequently his fear of persecution is not well-founded. Nonetheless, it referred the case for consideration under section 417 of the Migration Act on humanitarian grounds on the basis that, despite the finding that State protection would be adequate, that did not mean that there was a complete guarantee that the author would be safe from future harm by members of his family and their associates, which may constitute unique and exceptional circumstances. The State party notes that the "absence of complete guarantee" is different from the test of "real risk" applied by the Committee. The Minister subsequently declined to intervene in the author's case.[5]

4.13 The State party submits that the decision not to grant the author a protection visa was properly determined according to Australian law, based on a robust process of merits and judicial review offered by the domestic legal system. The State party notes the Committee's position that it is for the courts of States parties to evaluate facts and evidence in a particular case, unless it is found that the evaluation was clearly arbitrary, or amounted to a denial of justice.[6] The proceedings in the author's case did not suffer from any such defects.

4.14 The State party further contends that recent country information confirms the RRT finding that Senegal is able to provide adequate and effective protection to the author.[7] In particular, recent information indicates that Senegal has taken reasonable measures to protect the lives and safety of its citizens, including by ensuring that appropriate criminal

[5] A further section 417 request was initiated by DIAC on 7 July 2011, but was found not to meet the guidelines for referral to the Minister (see para. 4.4 above).

[6] Communication No. 541/1993, *Simms v. Jamaica*, inadmissibility decision adopted on 3 April 1995, para. 6.2.

[7] The State party refers to the *International Religious Freedom Reports 2008, 2009 and 2010* of the United States Department of State, and its 2010 Human Rights Report: Senegal. Available from www.state.gov/j/drl/rls/hrrpt/2010/af/154366.htm.

law is in place and that the police force and system of justice are reasonably effective and impartial. Accordingly, the State party is of the view that the author failed to sufficiently substantiate, for the purposes of admissibility, his claim that he would not be offered adequate State protection in Senegal against threats from the Mourides Brotherhood or his family.

4.15 The State party submits that its non-refoulement obligations do not extend to potential breaches of article 18 of the Covenant. Accordingly, it invites the Committee to declare that part of the communication inadmissible *ratione materiae* with the Covenant.

4.16 On the merits, the State party submits that the facts alleged by the author in relation to articles 6 and 7 do not meet the threshold requirement of a risk of irreparable harm as a necessary and foreseeable consequence of his return to Senegal.[8] The State party reiterates that there are no substantial grounds for believing that the author will face torture, inhuman or degrading treatment or punishment, or arbitrary deprivation of life upon his return to Senegal. The author has adequate and effective State protection available to him in Senegal and consequently, it is neither necessary nor foreseeable that he would suffer irreparable harm if he was to be returned there. There is no evidence that violence against Christians is tolerated or sanctioned in any way, nor are there reports of societal violence, harassment or discrimination based on religious affiliation, belief or practice. Christian and Muslim leaders in the country maintain a public dialogue to help diffuse social crises and promote dialogue. Senegalese law prohibits all forms of discrimination and provides for freedom of religion, and law and order is effectively maintained by the police forces throughout the country.

4.17 Regarding article 18, the State party submits that the author's claim is devoid of merit, as Senegal is a secular State, well-known for its religious tolerance. There is no evidence that the author has attempted to relocate to any part of Senegal other than Touba or Kaolack to avoid harm from his family. Therefore, according to the State party, there is no risk that the author would face a breach of his rights under article 18 as a necessary and foreseeable consequence of his return to Senegal.

Author's comments on the State party's submission

5.1 On 1 March 2012, the author submitted his comments on the State party's observations on admissibility and merits. In addition to the facts presented in his initial submission, he notes that he has exhausted domestic remedies. A judicial review from the RRT decision would only have been available to him if he had a proper ground for appeal to the Federal Magistrates Court. No such ground was available to him. Section 474 of the Migration Act of 1958 prohibits appeals from RRT. The High Court of Australia, in its decision *Plaintiff S157/2002 v. Commonwealth of Australia* (2003), held that RRT decisions affected by jurisdictional error fall outside the scope of section 474 of the Migration Act. Therefore, only those decisions which contain a jurisdictional error can be appealed before the Federal Magistrates Court. In addition to that strict legal threshold for permissible appeals, it is incumbent on the appellant, under section 486 (e) and (i) of the Migration Act, to certify in writing that there are reasonable prospects of success for the appeal. The author notes that a careful review of the RRT decision by his legal counsel revealed that there was no jurisdictional error in the decision of 28 October 2009. As a result, no appeal to the Federal Magistrates Court was available to him.

[8] The State party refers to communication No. 469/1991, *Ng v. Canada*, Views adopted on 5 November 1993, para. 6.2.

5.2 With respect to the State party's contention that he has failed to substantiate his claims, the author reiterates that there are strong reasons and evidence supporting his claims that he would be exposed to a real risk of irreparable harm as a necessary and foreseeable consequence of his return to Senegal, the absence of any safe area in which he could relocate in Senegal, as (a) his extended family will find him anywhere in the country; (b) the Mourides Brotherhood, which is active throughout Senegal, will find him and kill him; and (c) the police will not protect him because they consider the issue to be a family matter and will not become involved. The police also told the author that the Mourides Brotherhood was too powerful. Moreover, around 95 per cent of the police officers in Senegal are Muslim, and most of them are members of the Mourides Brotherhood.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether the communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee has ascertained, as required under article 5, paragraph 2 (a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes the State party's argument that the author has failed to exhaust domestic remedies, as he did not appeal the decision of the Refugee Review Tribunal before the Federal Magistrates Court. The Committee recalls its jurisprudence to the effect that authors must avail themselves of all domestic remedies in order to fulfil the requirement of article 5, paragraph 2 (b), of the Optional Protocol, insofar as such remedies appear to be effective in the given case and are de facto available to the author.[9] In the present case, the Committee notes the author's contention that, as there was no jurisdictional error in the Refugee Review Tribunal's decision of 28 October 2009, no judicial review before the Federal Magistrates Court was available to him under the existing provisions of the Migration Act, as interpreted by relevant case law. The Committee notes that the author's statement has not been challenged by the State party, and accordingly considers that it is not precluded from considering the communication under article 5, paragraph 2 (b), of the Optional Protocol.

6.4 The Committee notes the State party's challenge to the admissibility of the communication pursuant to article 2 of the Optional Protocol on the ground that the author has failed to substantiate his claims under articles 6 and 7 of the Covenant. However, the Committee finds that, for the purposes of admissibility, the author has adequately explained the reasons for which he fears that a forcible return to Senegal would result in a risk of treatment incompatible with articles 6 and 7 of the Covenant, relying on his past experience whereby, as a Christian convert, he was assaulted on two occasions, and on his claim that he failed to obtain the protection of the police, which he had sought. The Committee therefore finds the author's claims under articles 6 and 7 admissible under article 2 of the Optional Protocol.

6.5 With respect to the State party's argument that article 18 of the Covenant lacks extraterritorial application, the Committee is of the view that the author's allegations under

[9] See, inter alia, communications No. 1959/2010, *Warsame v. Canada*, Views adopted on 21 July 2011, para. 7.4, and No. 1003/2001, *P.L. v. Germany*, inadmissibility decision adopted on 22 October 2003, para. 6.5.

that provision cannot be dissociated from his claims under articles 6 and 7, which must be determined on the merits.[10]

6.6 The Committee declares the communication admissible insofar as it appears to raise issues under articles 6, paragraph 1, 7 and 18 of the Covenant, and proceeds to their consideration on the merits.

Consideration of the merits

7.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5, paragraph 1, of the Optional Protocol.

7.2 The Committee notes the author's claim that, as a result of his conversion from Islam to Christianity in 1994, he would face physical harm or may be killed by the Mourides Brotherhood or his own family should he be returned to Senegal. The Committee notes the author's claim that in November 1994, he was attacked by his family, which threatened to have a fatwa issued by the Mourides Brotherhood against him; and that after he escaped to the town of Kaolack, he was located and severely beaten up by his family, along with other members of the Mourides Brotherhood. The Committee also notes the author's contention that no State protection is available to him in Senegal. The Committee notes that the Refugee Review Tribunal, while it accepted most of the facts of the case, was not satisfied that the author would face a risk of harm from the Mourides Brotherhood, and determined that adequate State protection would be available in Senegal.

7.3 The Committee recalls its general comment No. 31 in which it refers to the obligation of States parties not to extradite, deport, expel or otherwise remove a person from their territory where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant.[11] The Committee also recalls that, generally speaking, it is for the organs of States parties to the Covenant to review or evaluate facts and evidence in order to determine whether such a risk exists.[12]

7.4 In the present case, the Committee observes that the author's refugee claim was thoroughly examined by the State party's authorities, which concluded that the author did not have a well-founded fear of persecution. The author did not seek judicial review of the decision of the Refugee Review Tribunal rejecting his claim, and does not assert any procedural irregularity in the RRT decision. The Committee notes that RRT accepted that the author had converted to Christianity in 1994; that in November 1994, some members of his family attacked him and left him without food for three days; and that later in Kaolack, where he had escaped, he was located and attacked by members of his family and some members of the Mourides Brotherhood. RRT concluded that any threat to the author came from his family and their associates, but not from the Mourides Brotherhood as such, and it rejected the author's contention that no adequate and effective State protection would be available to him elsewhere in Senegal. The Committee also notes that the author has not put forward any other reason why he could not relocate within Senegal. The Committee observes that the author has not identified any risk factor that the State party's authorities

[10] See communication No. 2007/2010, *X. v. Denmark*, Views adopted on 26 March 2014, para. 8.4.

[11] See general comment No. 31[80] on the nature of the general legal obligation imposed on States parties to the Covenant, para. 12.

[12] See communication No. 1763/2008, *Pillai et al. v. Canada*, Views adopted on 25 March 2011, para. 11.4. See also communications No. 1819/2008, *A.A. v. Canada*, inadmissibility decision adopted on 31 October 2011, para. 7.8, and No. 2049/2011, *Z. v. Australia*, Views adopted on 18 July 2014, para. 9.3.

failed to take properly into account, or any other irregularity in the decision-making process. The author disagrees with the factual conclusions of the State party's authorities, but does not show that they are manifestly unreasonable. The Committee therefore concludes that it was not shown that the authorities in Senegal would not generally be willing and able to provide impartial, adequate and effective protection to the author against threats to his physical safety, and that it would not be unreasonable to expect him to settle in a location, especially one more distant from Touba, where such protection would be available to him. Provided that the author would only be returned to such a location where the State party determines that adequate and effective protection is available, the Committee cannot conclude that removing him to Senegal would violate the State party's obligations under article 6 or 7 of the Covenant.

7.5 With regard to the author's claims under article 18, the Committee refers to its conclusions in paragraph 7.4, and on the same basis finds that it could not conclude that the author would face a real risk of treatment inconsistent with that article if he were removed to Senegal.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the author's removal to Senegal would not violate his rights under article 6, 7 or 18 of the Covenant.

Appendices

Appendix I

[Original: English]

Joint opinion of Committee members Gerald L. Neuman and Yuji Iwasawa (concurring)

We concur fully with the Committee's Views. We write separately merely to point out that the Committee's discussion in paragraph 7.4 reflects the well-established principle of the "internal flight alternative", a basic rule of international refugee law as well as international human rights law. Individuals are not in need of international protection if they can avail themselves of the protection of their own State; if resettling within the State would enable them to avoid a localized risk, and resettling would not be unreasonable under the circumstances, then returning them to a place where they can live in safety does not violate the principle of non-refoulement. See, for example, communication No. 1897/2009, *S.Y.L. v. Australia*, inadmissibility decision of 24 July 2013, para. 8.4; *Sufi and Elmi v. the United Kingdom*, Applications. Nos. 8319/07 and 11449/07 (European Court of Human Rights, 2011), para. 266; and *Omeredo v. Austria*, Application No. 8969/10 (European Court of Human Rights 2011) (inadmissibility decision).

Appendix II

[Original: English]

Individual opinion of Committee member Dheerujlall B. Seetulsingh (concurring)

While I come to the same conclusion as the majority that there is no violation by the State in the present case, I am of the view that such finding should not be subject to the condition stipulated at the end of paragraph 7.4, as this creates a considerable degree of uncertainty which may raise difficulty in complying with the views of the Committee. In the light of the Committee's own finding that the author has not put forward any reason why he could not relocate within Senegal, the burden falls upon him to avail himself of the protection of his own State as established by the doctrine of internal flight. The duty of ascertaining the location where adequate and effective protection is available in Senegal does not rest upon the authorities of the State party (Australia).Their duty is limited to obtaining reliable information that Senegal is a secular State where there is religious tolerance.

Appendix III

[Original: Spanish]

Individual opinion of Committee member Fabián Omar Salvioli (concurring)

1. I concur with the Committee's decision that there had been no violation of the Covenant in the case of *B.L. v. Australia* (communication No. 2053/2011), but I do not share the line of reasoning by which it arrived at this conclusion.

2. I understand that the Australian authorities duly considered the author's application for refugee status and that the author did not petition for a judicial review of that decision.

3. The author has not proved beyond a reasonable doubt that he might be persecuted by the State of Senegal or that he might be the target of attacks in Senegal or threats against his life made with the acquiescence or tolerance of the State of Senegal. In my view, those are the reasons on which the Committee should have based its decision.

4. The Committee should not have stated that "the author has not put forward any other reason why he could not relocate within Senegal" (para. 7.4). It is also regrettable that the Committee concluded that "it would not be unreasonable to expect him to settle in a location, especially one more distant from Touba, where such protection would be available to him" (para. 7.4).

5. The Committee has never based its decisions on the "internal flight alternative" or "internal relocation alternative" doctrines. It is my understanding that it has not done so in this case either and that the above-mentioned assertions figured no more than marginally in the line of reasoning that led to the Committee's decision.

6. The adoption of these doctrines in the course of the Committee's deliberations would represent a setback for the consideration of future cases and would undermine the standards of protection already established by the Committee in its settled jurisprudence.

7. I hope that in the future, the Committee will abstain from superfluous analyses that could becloud its practices in cases such as this. If a person would genuinely be at risk of becoming the victim of violations of article 6 or article 7 of the Covenant if that person were to be expelled or extradited from a State party to another State (whether or not it is a party to the Covenant), the Committee should find a violation regardless of whether or not there are any safer areas within the country to which the victim would be sent.